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9 BOARD OF TRUSTEES OF THE
10 NORTHERN CALIFORNIA
PLASTERERS HEALTH AND
WELFARE TRUST FUND, et al.,

11 Plaintiffs,

12 v.

13 DAVIDSON PLASTERING, INC.,

14 Defendant.

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16 Case No. 15-cv-2386-PJH

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20 **ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION**

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25 The court has reviewed Magistrate Judge Ryu's Report and Recommendation Re:
plaintiffs' motion for default judgment, as well as plaintiffs' objections to the report. The
court finds the report correct, well-reasoned and thorough, and adopts it in every respect
other than the amount of contractual liquidated damages, as explained below.

26 Accordingly, plaintiffs' motion for default judgment is GRANTED.

27 The report and recommendation first sets forth the three categories of damages
28 sought by plaintiffs: (1) contributions that became due before the suit was filed but were
paid after the filing of the action, (2) contributions that became due after the suit was filed
and were paid before the ruling on this motion, and (3) contributions that were paid, but
were paid late, before the filing of the action.

29 The report recommended that statutory liquidated damages be awarded for
30 category (1) in the amount of **\$8,258.26**. See Dkt. 25 at 9. As to categories (2) and (3),
31 the report recommended that no statutory liquidated damages be awarded, but instead,

1 that liquidated damages be awarded as a matter of contract. Id. at 9. As a result, rather
2 than receiving the 20% liquidated damages award provided for by statute, plaintiffs would
3 receive a 10% liquidated damages award provided for by the parties' contract. In the
4 report, the court calculated a 10% liquidated damages award by taking the total
5 requested liquidated damages award of \$108,394.00, subtracting the \$8,258.26
6 mentioned above, then dividing the remainder by two (on the assumption that the
7 remainder represented a 20% liquidated damages award for the contributions in
8 categories (2) and (3)).

9 Plaintiffs filed objections to the latter calculation, arguing that for the months of
10 October and November 2013, January through June 2014, August through December
11 2014, and January through February 2015, the liquidated damages were already
12 calculated at 10% in plaintiffs' motion for default judgment, so they did not need to be
13 divided in two by the court. In contrast, the requested liquidated damages for the months
14 of June through October 2015 were calculated at 20% in the default judgment motion,
15 making the court's division correct in those instances. Even though plaintiffs' original
16 motion papers did not make this clear, it has since submitted evidence showing the
17 contribution amounts in those months, and indeed, the originally-requested liquidated
18 damages for the months of October and November 2013, January through June 2014,
19 August through December 2014, and January through February 2015 do represent a
20 10% award. See Dkt. 27-1, Ex. A, B. Accordingly, the court sustains plaintiffs' objection,
21 and the contractual liquidated damages figure will be adjusted to \$83,678.32 (which
22 represents a 10% award for October and November 2013, January through June 2014,
23 August through December 2014, and January through February 2015), less the amount
24 already paid by defendants (\$15,100.62), resulting in a total of **\$68,577.70** in liquidated
25 damages for categories (2) and (3). See Dkt. 27-1, Ex. B, Dkt. 24-1, ¶ 10. When
26 combined with the \$8,258.26 from category (1), it results in a total liquidated damages
27 award of **\$76,835.95**.

28 When combined with the other amounts recommended in the report (\$12,135.82 in

1 interest, \$7,653.00 in attorneys' fees, and \$483.00 in costs), it results in a total of
2 **\$97,107.77**, and the court hereby awards that amount to plaintiffs.

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4 **IT IS SO ORDERED.**

5 Dated: May 19, 2016



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7 PHYLLIS J. HAMILTON
United States District Judge

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